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at O'clock & min. 98

MAY 10 2006

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (19)

IN RE:

Melvin C. Silas and Paula F. Silas,

Debtors.

C/A No. 02-02956-JW

Chapter 13

JUDGMENT

Based upon the findings of fact and conclusions of law made in the attached Order, the Trustee's Objection to DailmerChrysler's proof of claim is sustained in part and denied in part. DaimlerChrysler's Objection to Debtors' proposed chapter 13 plan constitutes an informal proof of claim. Therefore, DailmerChrysler has an allowed secured claim in the amount of \$4,800.00 and an allowed unsecured claim in the amount of \$8,040.84, to be paid in a manner consistent with other general unsecured creditors in Debtors' case.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 10, 2006

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IN RE:

C/A No. 02-02956-JW

Melvin C. Silas and Paula F. Silas,

Chapter 13

Debtors.

ORDER ALLOWING CLAIM OF DAIMLERCHRYSLER FINANCIAL SERVICES

This matter comes before the Court pursuant to the Trustee's Objection to the unsecured portion of DaimlerChrysler's claim. DaimlerChrysler filed its proof of claim on December 16, 2002. Trustee objects to allowing the unsecured portion of this claim because the proof of claim was filed more than ninety (90) days after the first date set for the meeting of creditors in violation of Bankruptcy Rule 3002(c). DaimlerChrysler responds that its conduct, prior to the claims bar date, constituted an informal proof of claim so that the formal proof of claim, filed after the claims bar date, should be allowed and should be paid in full either as an unsecured claim or as a secured claim.

Prior to the petition date, DaimlerChrysler obtained a security interest in a vehicle owned by Melvin Silas and Paula Silas ("Debtors"). Debtors filed this Chapter 13 case on March 8, 2002. In their proposed plan, Debtors sought to bifurcate the claim of DaimlerChrysler by paying DaimlerChrysler \$4,800.00 as a secured creditor and by paying the remainder of DaimlerChrysler's claim as an unsecured creditor. Debtors' plan proposed to pay general unsecured creditors two (2%) percent of their allowed claims. On April 2, 2002, prior to the expiration of the claims bar date, DaimlerChrysler filed an Objection to Debtors' proposed plan ("Objection") on grounds that the value of its collateral exceeded the value Debtors proposed to pay in their plan. In the Objection, DaimlerChrysler stated that it was owed \$12,840.84 on its claim and it conceded that a portion of its claim was unsecured. A hearing on

the Objection was scheduled for May 14, 2002. DaimlerChrysler voluntarily withdrew its Objection on May 13, 2002. Debtors' amended plan, which established DaimlerChrysler was owed a secured claim in the amount of \$4,800.00, was subsequently confirmed on August 1, 2002.

On December 16, 2002, DaimlerChrysler filed a proof of claim.¹ Contrary to the confirmed plan, DaimlerChrysler's filed proof of claim states that its entire claim is fully secured. On February 2, 2006, Trustee filed an objection to \$8,040.84 of DaimlerChrysler's claim on grounds that the claim was not timely filed. The Trustee does not challenge whether DaimlerChrysler is entitled to \$4,800.00, the portion of the claim provided for by the plan. DaimlerChrysler asserts that its Objection to Debtors' proposed plan constituted an informal proof of claim, which was converted into a formal proof of claim by its December 16, 2002 filing. DaimlerChrysler's response to Trustee's objection seeks to allow the \$8,040.84 portion of its claim as an unsecured claim "to be paid at one hundred (100%) percent." At the hearing on Trustee's objection, DaimlerChrysler argued that its entire claim should be treated as a secured claim on grounds that the filed claim relates back to the Objection and that allowance of its entire claim as secured claim will not adversely impact Debtors' estate.

Courts in this jurisdiction recognize that an informal proof of claim, which satisfies certain requirements, can be a means by which a creditor can have an allowed claim that may otherwise not be timely. See In re Davis, 936 F.2d 771, 775-776 (4th Cir. 1991); In re Elleco, 295 B.R. 797, 800 (Bankr. D.S.C. 2002). "Under the informal proof of claim doctrine, if a creditor's actions before the expiration of the deadline to file a claim constitutes an informal proof of claim, the creditor is allowed to amend the informal proof of claim with a formal proof of claim complying with Rule 3001(a)." Elleco, 295

¹ According to Bankruptcy Rule of Procedure 3002, the correct deadline for filing a proof of claim in this case was July 9, 2002. The Court recognizes that two conflicting deadlines were entered on the Court's docket by the clerk's office in error. There may be an argument that this mistake caused prejudice to DaimlerChrysler; however, this argument was not made and therefore will not be addressed.

B.R. at 800. As a general rule, the Fourth Circuit has a liberal policy in favor of finding an informal proof of claim if there is sufficient evidence in the bankruptcy case's record that establishes a claim. In which case, the informal proof of claim may be amended when substantial justice will be done. See id. (citing Fyne v. Atlas Supply Co., 245 F.2d 107,108 (4th Cir. 1957) and In re Fant, 21 F.2d 182, 183 (W.D.S.C 1927)).

Issues involving an informal proof of claim are determined on a case by case basis. An informal proof of claim has two requirements: (1) an affirmative act that puts the court and other parties on notice of an assertion of a specific claim and (2) possession of an intent to collect that claim. In re Elleco, 295 B.R. 797. If these requirements are met, the Court must also consider whether the claim should be allowed by considering any potential adverse impact on the debtor, other creditors, the trustee, and the public. See In re Hardgrave, C/A No. 94-4832, 1995 WL 371462 at *3 (4th Cir. 1995).

In DaimlerChrysler's Objection to Debtors' proposed plan, it asserted that the total debt owed on the vehicle was \$12,840.84. The Court believes that the Objection meets the requirements for an informal proof of claim. See id. at *3-4 (allowing an unsecured creditor to treat an objection to confirmation as an informal proof of claim). This filed pleading put Debtors, the Trustee, the Court, and all parties in interest on notice of the nature and amount of DaimlerChrysler's claim and DaimlerChrysler's intent to collect this claim from Debtors' estate. The voluntary withdrawal of the Objection, in the instance of this case, does not negate DaimlerChrysler's intent to collect the claim but primarily demonstrates that DaimlerChrysler did not intend to pursue its objection to the valuation of the secured portion of its claim. See In re Washington, 158 B.R. 722, 724 (Bankr. S.D. Ohio 1993) (allowing an objection to valuation of a creditor's claim to be treated as an informal proof of claim even though the objection was withdrawn). Withdrawal of a pleading, however, in other instances may be construed as an intent not to collect a claim and may weigh against the Court allowing the withdrawn

pleading to be construed as an informal proof of claim. In this case, Trustee acknowledged at the hearing on his objection to claim that DaimlerChrysler's Objection appears sufficient to constitute an informal proof of claim. Based upon the foregoing, DaimlerChrysler's Objection constitutes an informal proof of claim under the standards set forth by the Fourth Circuit.

The Court must next consider whether to allow the claim and if so, to what extent. The Trustee's objection opposes the claim to the extent it exceeds the \$4,800.00 secured portion allowed by Debtors' confirmed plan. In its response to Trustee's objection, DaimlerChrysler admits that it has received the \$4,800.00 secured portion of its claim and \$160.82, which is precisely two (2%) of \$8,040.84, the remainder of DaimlerChrysler's claim. However, DaimlerChrysler alleged in its pleading that its unsecured claim should be paid at 100% or treated entirely as a secured claim on grounds that the filed claim, which lists the debt as entirely secured, relates back to its Objection.

The Court believes that DaimlerChrysler's claim in excess of \$4,800.00 should be allowed as a general unsecured claim to be paid in a manner consistent with other general unsecured creditors in this case. There is no harm to Debtors or other creditors in allowing this portion of DaimlerChrysler's claim as an unsecured claim. These parties have not objected to DaimlerChrysler's claim or the distribution that DaimlerChrysler has received from Debtors' plan. Further, there appears to be no prejudice if the claim is allowed as an unsecured claim. Trustee has already distributed the percentage Debtors proposed to pay general unsecured creditors to DaimlerChrysler on the \$8,040.84 portion of its claim. The Trustee is also not required to adjust payment to other creditors. See Hardgrave, 1995 WL 371462 at *4 (finding no prejudice to trustee). Therefore, the Court finds that DaimlerChrysler's claim of \$8,040.84 should be allowed as an unsecured claim to be paid according to the confirmed plan.

The Court does not agree that DaimlerChrysler's claim should be treated entirely as a secured

claim or that it should be paid 100% of its claim, if other unsecured creditors are not being paid 100% of their claims. DaimlerChrysler had notice of Debtors' plan and objected to its treatment under the plan. DaimlerChrysler withdrew its Objection and thereby evidenced an intent not to seek to increase its distribution beyond that provided for by the plan, which limited its secured claim to \$4,800.00. DaimlerChrysler did not seek relief from the order confirming the plan and should not now be allowed to bootstrap its filed claim, alleging it is fully secured based upon an informal claim, which only indicated that DaimlerChrysler was partially secured. To allow DaimlerChrysler to receive a 100% distribution on its claim would circumvent the binding effect of confirmation and prejudice other creditors. See 11 U.S.C. § 1327. Chapter 13 allows Debtors to bifurcate DaimlerChrysler's claim and this Court's local rules provide a mechanism by which DaimlerChrysler and other creditors may oppose the treatment of their claims in a proposed plan. See 11 U.S.C. § 1322, SC LBR 3015-1. DaimlerChrysler apparently could not contest Debtors' value of the vehicle at the confirmation hearing and accepted that the vehicle was only worth \$4,800.00. DaimlerChrysler should therefore not be allowed to contest the plan now through its tardy proof of claim. See In re Wingard, C/A 05-13394-W, slip op. (Bankr. D.S.C. Mar. 17, 2006) (denying a motion to reconsider confirmation of a debtor's plan where objecting creditor withdrew objection to valuation prior to confirmation). Allowing such favorable treatment of DaimlerChrysler's claim would also prejudice all other unsecured creditors, as it would decrease their distribution under the plan. Davis, 936 F.2d at 776 (denying an informal proof of claim where allowance would take priority over other creditors and decrease the amount available for distribution to other creditors). The Court therefore denies DaimlerChrysler's request to treat its claim as fully secured or to pay DaimlerChrysler 100% of its claim.

It is therefore ordered that the Trustee's Objection to Claim is sustained in part and denied in

part. Based upon the confirmed plan and DaimlerChrysler's informal proof of claim, DaimlerChrysler is allowed a secured claim in the amount of \$4,800.00 and an unsecured claim in the amount of \$8,040.84, to be paid in a manner consistent with other general unsecured creditors in Debtors' case.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 10, 2006